



In support of Baxter's proposed resolution, Baxter states as follows:

**A. Granting Inviro's Motion Will Require The Re-Opening of The Discovery Period and Unduly Delay This Proceeding.**

1. This Opposition was filed in October, 2001 and the parties have been in the Discovery Phase for two full years now (notwithstanding the Board's temporary suspension of the proceedings from January, 2003 to September, 2003, during which time the Board was reviewing and ruling on numerous pending motions.) Discovery officially closed on December 17, 2003, though the parties jointly consented to one additional month (until January 17, 2004) in which they would extend discovery for the limited purpose of gathering and exchanging specific documents which were referenced during depositions and handle any outstanding authentication issues with regard to certain documents. (The parties' motion on this issue was filed December 17, 2003.)

2. Inviro waited until the final days of discovery to depose Baxter representatives (Inviro took its depositions on December 15 and 16, 2003 and the cut off was set at December 17, 2003) and during that time determined that certain goods in one of Baxter's INTERLINK registrations may not be in use. Regardless of the clear overlap of goods between Inviro's intended uses for ULTRALINK and Baxter's current uses of INTERLINK, as covered by Baxter's numerous registrations, and the lack of any indication that Baxter fraudulently procured or fraudulently maintained its registration, Inviro attacked this particular registration.<sup>1</sup>

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<sup>1</sup> The gist of Inviro's allegations is that Baxter fraudulently procured and maintained the registration in connection with two of the four goods listed in the recitation, namely "drug vials" and "drug vial stoppers." Baxter makes no admission to having intentionally procured the registration in connection with any goods for which it does not use the mark, however, this Board should note that the Registration at issue is due for renewal in February, 2004, and Baxter has indicated in such renewal papers that "drug vials and

3. If this Board allows Inviro to add this new claim for cancellation based on fraud, discovery would have to be re-opened and Baxter would need to take additional discovery in order to defend against that claim. Not only would Baxter need to inquire regarding Inviro's basis for the fraud claim but, most importantly, it would need to take depositions of the individuals involved in preparing and filing the application and affidavits at issue. It appears that at least two of the individuals involved in the filing of Baxter's application, namely, Vicki Cross and A. Gerard Sieck, are no longer employees with Baxter, and, in fact, Ms. Cross now resides in Colorado. Upon information and belief, Ms. Cross was responsible for preparing the initial application, gathering the supporting specimens, and confirming the recitation of goods, and was also responsible for preparing the Section 8 and 15 affidavit for the INTERLINK registration in question. A. Gerard Sieck was the Baxter representative who attested to the validity of the application information. Therefore, the information needed cannot be easily or rapidly gathered. In essence, discovery would need to be re-opened and the Opposition would be unduly delayed. In this type of situation, a motion for leave to add a counterclaim should be denied.<sup>2</sup> See e.g., *Lone Star Steakhouse & Saloon Inc. v. Alpha of Virginia Inc.*, 33 USPQ2d 1481, 1495 (4tCir. 1995) (wherein court upheld lower court's refusal to allow amendment of pleading to add counterclaim for fraud, in part, because the it would have required new discovery and the timing would have prejudiced the plaintiff).

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drug vial stoppers" will be deleted since it has just recently learned that it is not currently using the mark in connection with those goods.

<sup>2</sup> If this Board grants Inviro's motion for leave to amend, Baxter hereby requests an additional 60 days to take discovery in connection with defending against the new claims and to suspend and/or extend the testimony time-periods already set in the case.

**B. Granting Baxter's Motion to Amend its Notice of Opposition to Delete the Registration at Issue would Not Prejudice Either Party or Delay the Proceeding.**

4. Through recent discovery documents and information gathered, Baxter has learned more about the specific intentions of Inviro's ULTRALINK mark. Based upon this information, Baxter no longer believes that its Registration No. 1,821,178, which Inviro now wants to attack, is needed to pursue its claim against Inviro in this Opposition.

5. Therefore, in order to continue forward with this Opposition without further delay, Baxter moves for leave to amend its Notice of Opposition to delete the Registration under attack from the case, and merely assert common law rights in its use of INTERLINK in connection with syringes and drug vial adapters (which are listed in the registration at issue.)

6. This deletion and additional claim will cause no prejudice or undue delay to Applicant since the discovery documents already exchanged and the depositions already taken support Baxter's use of INTERLINK in connection with these goods for numerous years. Inviro has already taken discovery on all issues it deemed necessary in connection with Baxter's Opposition. Inviro would not need to take any additional discovery since Baxter would be, in fact, narrowing the basis of its Opposition.

7. Should Inviro continue to be concerned by Baxter's registration for INTERLINK, No. 1,821,178, it is free to file a separate cancellation action against it. However, there is no need for such an action to be added to this case since the outcome would have no bearing on Baxter's claim against Inviro. Even if, for argument's sake, the INTERLINK registration, No. 1,821,178 is ultimately cancelled, it will not change

the fact that Baxter has two other valid and incontestible registrations for INTERLINK in support of its claim.

### CONCLUSION

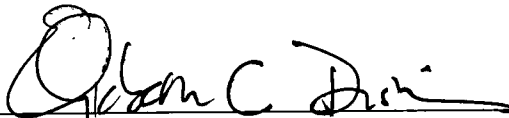
Allowing Inviro leave to add a Counterclaim to attack one of Baxter's INTERLINK registrations would cause the necessity to re-open discovery and would unduly delay these proceedings. In the alternative, granting Baxter's Motion for Leave to simply remove the Registration from issue in the case satisfies Inviro's concerns, narrows the issues, and allows this Opposition to continue forward without delay. In accordance with T.B.M.P. § 507.01, a signed copy of the proposed Amended Notice of Opposition, removing Registration No. 1,821,178 and adding certain common law claims is attached hereto as Exhibit 1. (See paragraph 3 in Amended Notice for substantive changes.)

WHEREFORE, Opposer respectfully moves this Board to deny Inviro's Motion for Leave to Amend its Answer and grant Baxter leave to amend its Notice of Opposition. Should the Board grant Inviro's Motion, Baxter moves in the alternative for an additional 60 day period of discovery in order to defend against the new issues and an extension and/or suspension of testimony periods.

Respectfully submitted,

Date:

January 15, 2004



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Baxter International Inc.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91150298
	)	Serial No. 76/151,380
Inviro Medical Devices Ltd.,	)	
	)	
Applicant.	)	

**AMENDED NOTICE OF OPPOSITION**

In the matter of application Serial No. 76/151380 for registration of the alleged mark ULTRALINK in International Class 10 by Inviro Medical Devices, Ltd. (hereinafter "Applicant"), which was published in the Official Gazette on August 7, 2001, at page TM 222, Baxter International Inc. (hereinafter "Opposer"), a corporation of Delaware, located at One Baxter Parkway, Deerfield, Illinois 60015, who previously timely filed a Request for Extension to Oppose this application, believes it will be damaged by the registration, and therefore opposes the same.

As grounds for the opposition, Opposer alleges as follows:

1. Applicant seeks to register ULTRALINK as a trademark in International Class 10 for "medical devices, namely cannulae, medical, hypodermic, aspiration and injection needles, medical, hypodermic, aspiration and injection syringes, connectors, ports, catheters and injection sites" as evidenced by the publication of said mark in the Official Gazette on page TM 222 of the August 7, 2001 issue.

2. Opposer has for many years been engaged in the manufacture, marketing and sale of infusion apparatus and instruments to the medical industry under the mark INTERLINK.

3. Opposer owns two (2) INTERLINK registrations upon which it bases this Opposition, namely Registration No. 1,721,708 for "medical apparatus; namely, fluid administration set, extension set, secondary medication set, catheter extension set, y-type catheter extension set and IV connector loop set, all sets primarily composed of tubing, drip chamber, clamps, spike, hangers, finger guards, drop formers, injection sites, flow regulators, connectors, heparin locks, locking adapters, and tip protectors" and No. 1,812,016 for "medical apparatus, namely cannula"; both in International Class 10. The foregoing INTERLINK registrations are valid, subsisting and are all incontestable registrations. Copies of the Registration Certificates are attached hereto as Exhibit A. In addition, Opposer has long-standing common law rights associated with the mark INTERLINK for use in connection with syringes and drug vial adapters.

4. Based on its use of the INTERLINK mark, Opposer has developed substantial good will therein and public recognition thereof, and said mark has come to identify Opposer's products to the medical infusion market and the relevant purchasing public.

5. On information and belief, Opposer's INTERLINK mark is one of the best known brands for infusion products. Opposer's INTERLINK products have been in the marketplace for more than 10 years.

6. The products recited in pending application U.S. Serial No. 76/151380 and upon which Applicant apparently intends to use the pending mark, likewise are directed

to the same medical infusion products market and concern identical goods to one of Opposer's INTERLINK products, namely cannulae, injection syringes, connectors and injection sites.

7. Opposer's goods and Applicant's respective goods are both used in connection with infusion of a fluid into a patient's bloodstream. The products are identical and the nature of the use of the products is identical.

8. Upon information and belief, Applicant will be promoting and marketing its ULTRALINK product to the same hospitals, acute-care facilities, and clinics as Opposer.

9. Upon information and belief, Applicant's product would be marketed and promoted at the same trade shows and through the same trade publications, as where Opposer's INTERLINK products are and have been marketed and promoted for years.

10. Upon information and belief, Opposer's goods and Applicant's respective goods are directed to the same segment of the same industry and through the same trade channels. Such customers would likely be familiar with Opposer's goods and would likely believe that Applicant's goods were somehow related to, complementary to, or otherwise authorized by Opposer.

11. Applicant's potential mark ULTRALINK is very similar in sight, sound and commercial impression to Opposer's INTERLINK mark, is identical in product and nature of the product use, will be marketed and sold to the same industry and through the same trade channels, and is therefore, likely to cause confusion or mistake, or to deceive, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. Section 1052(d).



WHEREFORE, Opposer respectfully requests that this opposition be sustained and that the registration of pending U.S. Serial No. 76/151380 be denied. The applicable fee of \$300.00 to file this opposition was submitted with the original Notice of Opposition.

Date: January 15, 2004

Respectfully submitted,

By: 

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Int. Cl.: 10

Prior U.S. Cl.: 44

**United States Patent and Trademark Office**

Reg. No. 1,721,708

Registered Oct. 6, 1992

**TRADEMARK  
PRINCIPAL REGISTER**

**INTERLINK**

BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015

FOR: MEDICAL APPARATUS; NAMELY,  
FLUID ADMINISTRATION SET, EXTENSION  
SET, SECONDARY MEDICATION SET, CATH-  
ETER EXTENSION SET, Y-TYPE CATHETER  
EXTENSION SET AND I.V. CONNECTOR  
LOOP SET, ALL SETS PRIMARILY COM-  
POSED OF TUBING, DRIP CHAMBER,

CLAMPS, SPIKE, HANGERS, FINGER  
GUARDS, DROP FORMERS, INJECTION  
SITES, FLOW REGULATORS, CONNECTORS,  
HEPARIN LOCKS, LOCKING ADAPTERS,  
AND TIP PROTECTORS, IN CLASS 10 (U.S. CL.  
44).

FIRST USE 10-2-1990; IN COMMERCE  
10-2-1990.

SER. NO. 74-188,893, FILED 7-26-1991.

LINDA E. BLOHM, EXAMINING ATTORNEY

Int. Cl.: 10

Prior U.S. Cl.: 44

**United States Patent and Trademark Office**

**Reg. No. 1,812,016**

Registered Dec. 21, 1993

**TRADEMARK  
PRINCIPAL REGISTER**

**INTERLINK**

BAXTER INTERNATIONAL INC. (DELAWARE  
CORPORATION)  
ONE BAXTER PARKWAY  
DEERFIELD, IL 60015

FIRST USE 10-2-1990; IN COMMERCE  
10-2-1990.

SER. NO. 74-379,211, FILED 4-15-1993.

FOR: MEDICAL APPARATUS; NAMELY,  
CANNULA, IN CLASS 10 (U.S. CL. 44).

ESTHER A. BORSUK, EXAMINING ATTOR-  
NEY

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of **OPPOSITION TO APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER & OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** was served via first class mail on 1/15/2004, to:

Duane M. Byers, Esq.  
Nixon & Vanderhye, P.C.  
1100 N. Glebe Road, 8<sup>th</sup> Floor  
Arlington, VA 22201-4714

Jessica T. Huth

**CERTIFICATE OF MAILING**

I hereby certify that this **OPPOSITION TO APPLICANT'S MOTION FOR LEAVE TO AMEND ANSWER & OPPOSER'S MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION** (along with any documents referred to as being attached or enclosed) is being deposited (in triplicate) with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, **BOX TTAB NO FEE**, Arlington, Virginia 22202-3514 on January 15, 2004.

Date: January 15, 2004

Jessica T. Huth